IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATIONS NO. 25, 26 AND 27 OF 2005.

CRIMINAL MISC. APPLICATION NO. 25 of 2005.

Esteve Louis Vaz,
aged 51 years,
r/o H.No. 1373, Shiroda,
Chicangal, Goa. .... Applicant.

Versus

S T A T E
Through the Ponda Police Inspector,
Ponda Police Station, Ponda, Goa. .... Respondent.

CRIMINAL MISC. APPLICATION NO. 26 OF 2005.

Julio Esteve Vaz,
r/o Shiroda, Chicangal,
Goa. .... Applicant.

Versus

State,
Through the Ponda Police Inspector,
Ponda Police Station,
Ponda, Goa. .... Respondent.

CRIMINAL MISC. APPLICATION NO. 27 OF 2005.

Jose Vaz,
r/o Shiroda, Chicangal,
Goa. .... Applicant.

Versus

State,
Through the Ponda Police Inspector,
Ponda Police Station, Ponda, Goa. .... Respondent.

Shri Nitin Sardessai, Advocate for the Applicants.

Ms. W. Coutinho, Additional Public Prosecutor for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 10th MARCH, 2005.

ORAL ORDER:

The applicants who are accused in Crime No.31/05 of Ponda Police Station have approached this Court for anticipatory bail, their applications for anticipatory bail having been rejected by the Court of Sessions, Panaji, by Order dated 21.2.05.

2. The said Crime No.31/05 came to be registered under Sections 341, 307 r/w S.34 I.P.C. On 7.2.05, upon a complaint filed by Smt. Shavanti G. Gaonkar, the wife of the injured Gurudas Gaonkar.

3. As can be seen from the statement of the said Gurudas, the said Gurudas was accused in Crime No.262/02 under S.302 I.P.C. with the allegation that he had committed the murder of Socorro Vaz, the son of the applicant Esteve Vaz. The said case ended in acquittal by the Court of Sessions and I am informed that an appeal against the acquittal filed

before this Court was also dismissed. According to the injured Gurudas T. Gaonkar, on the last date of hearing of the said murder case in which he was an accused, he was threatened to be killed outside the Court of Sessions, Panaji by the applicant Esteve Vaz and his relatives and again on another occasion when he had gone along with his wife to the Bank at Shiroda, he was given bad words by the applicant Esteve Vaz and his wife and he had avoided the situation. According to him on 7.2.05 at about 12.00 hrs. he stopped at Kushali's bar known as “Swarna Bar” to buy cigarettes and when he was sitting in the veranda of the said bar, the applicant Esteve Vaz assaulted him with an axe on the head and the applicant Jose Vaz assaulted him with a danda and when he ran to save himself, by the back door of the bar, he was assaulted by all three of them with dandas and he fell unconscious and regained his consciousness at G.M.C., Bambolim. He was at G.M.C. until 24.2.05.

4. The learned Sessions Judge came to the conclusion that there was evidence to show that the applicants were involved in the offences which were serious in nature and the axe which was used was yet to be recovered and the statements of the other witnesses were also to be recorded and considering the gravity of the offences in which the applicants were involved, the learned Sessions Judge proceeded to reject their applications for anticipatory bail.

5. Notice of these applications having been given to the State, the grant of anticipatory bail has been opposed to by the State by stating that till date every possible efforts were made to trace and arrest the applicants, but they have been absconding and have been evading arrest. It has been stated even the family members of the applicants have been absconding inspite of the fact that the relatives of the applicants were asked to inform the applicants to appear at the Ponda Police Station for investigation and call letters were pasted on the main door of the house of the applicants as well as copies of the same were also kept with the relatives of the applicants. It is also stated that the investigations are still at the preliminary stage and the weapon used by the accused/applicants is yet to be recovered.

6. Shri Sardessai, the learned Advocate of the Applicants has submitted that the offences alleged against the accused are not so serious as sought to be made out on behalf of the State since the medical certificate does not show that there was any incised wound caused to the injured, and the same having been caused by an axe. Shri Sardessai has further submitted that the presence of the applicants is not at all necessary for custodial interrogation and therefore the applicants be admitted to bail on terms as this Court may deem fit to impose.

7. On the other hand, Ms.Coutinho, learned Addl. P.P. has submitted that

the applicants are involved in serious offences and their presence is necessary for custodial interrogation including for the purpose of the recovery of the axe which was used in the commission of the offence. It is also submitted by the learned Addl. P.P. that till date the applicants are absconding in a forest and inspite of efforts made to arrest them, the police have been unsuccessful to trace their whereabouts. In reply, Shri Sardessai has submitted that the fact that the applicants appeared before this Court and filed affidavits in support of these applications shows that they have not been absconding.

8. Be that as it may, the Hon'ble Supreme Court in the case of **Balchand Jain (A.I.R. 1977 S.C. 366) has** observed that S.438 of the Code of Criminal Procedure is an extraordinary remedy and should be resorted to only in special cases. The same view has again been echoed by the Supreme Court in the case of **Bharat Chaudhary and another v. State of Bihar and another (2003 AIR SCW 5092)** wherein the Supreme Court stated that the object of S.438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The Supreme Court has further stated that the gravity of the offence is an importat factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation. It is certainly not the case of the applicants that they are being falsely implicated or being harassed.

9. The applicants were directed to remain present before this Court today and they accordingly have remained present. The fact that the applicants appeared before this Court and filed affidavits in support of their applications, is not sufficient to repel the allegation that they have been absconding. The case diaries which I have perused as well as the reply filed, convinces me to believe at this stage that the applicants not only absconded from the date of commission of the offences, but have been absconding even after the order of the learned Sessions Judge dated 21.2.05 was passed rejecting their application. It was expected on the part of the applicants, after their applications were rejected by the learned Sessions Judge to have surrendered before the learned Sessions Judge or obtained a stay of the said Order to approach this Court to obtain anticipatory bail. In my view the very fact that the applicants have evaded the police over a month and inspite of the Order dated 21.2.05 of the learned Sessions Judge, shows that they have been absconding. Absconders cannot be allowed to invoke discretionary jurisdiction of granting anticipatory bail. This Court will not exercise its discretionary jurisdiction in favour of absconders and on this count alone the applications for bail filed on behalf of the accused deserve to be rejected. The Supreme Court in the case of **Nirajan Singh and another (A.I.R. 1980 S.C. 785)** has clearly stated that outlaw cannot ask for the benefit of law and he who flees justice cannot claim justice.

10. The provisional medical certificate shows that there were lacerations on the right occipital region as well as on the left occipital region of the injured Gurudas T. Gaonkar and the opinion given is that they were caused by a sharp weapon. When the said medical certificate is considered in the light of the statement of the injured, it could certainly be said that the injured was assaulted on the vital parts of the body namely on the head with deadly weapons including the said axe and therefore it could be also inferred, in the light of the previous threats given to the said injured, that the accused intended to kill the said Gurudas T. Gaonkar. It is therefore obvious that the offences registered against the applicants were serious in nature including the said offence under S.307 I.P.C. On that count the contention of Shri Sardessai that the accused are not involved in serious offences cannot be accepted. Although the 'dandas' were found at the scene, the axe used in the alleged incident has not been recovered. The presence of the applicants in custody would certainly be required to recover the said axe. In case the said axe is not recovered today, tomorrow it may only prove fatal to the case of the prosecution. The presence of the applicants in custody, therefore is necessary to complete further investigations including for the recovery of the said axe.

11. In matters of the grant of anticipatory bail, a balance has to be struck between safeguarding the liberty of the citizen and the right to

investigate by the Police in serious offences in public interest. In the case at hand the applicants are not only involved in serious offences, but their presence is also required to complete further investigations in the case.

12. In my view the applications for bail filed on behalf of the applicants were rightly rejected by the learned Sessions Judge. They are also required to be rejected by this Court.

13. The applications are therefore hereby rejected.

N. A. BRITTO, J.

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